

## KEY TOPIC

# How Have Japanese Policies Changed in Accepting Foreign Workers?

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On December 8, 2018, the Japanese Diet enacted a partial amendment to the Immigration Control and Refugee Recognition Act (Immigration Control Act, ICA), establishing two types of new resident statuses for foreign workers: Specified Skilled Type 1 and Type 2 (*tokutei ginō 1 gō* and *2 gō*). While foreign workers could previously only be accepted in professional or technical fields, this amendment significantly expands the bracket to include semi-skilled workers. This article provides an overview of Japan's policies on accepting foreign workers over the years and some observations on the potential impact of this amendment on Japanese society.

## I. The 1989 amendment to the ICA

In the 1960s and 70s, the Japanese Cabinet repeatedly approved policy that was against accepting foreign workers. Debate on pursuing new policy challenge for accepting foreign workers began in the late 1980s, during the period of high economic growth, called Japan's "bubble economy." In 1988, the Ministry of Labour (currently Ministry of Health, Labour and Welfare, MHLW) proposed an employment permit system, under which employers wishing to hire overseas workers would be obliged to obtain an employment permit before hiring. Ultimately, this did not come to fruition, due to fierce objection from the Ministry of Justice (MOJ), which holds jurisdiction over immigration administration.

However, in 1989, the MOJ amended the ICA to provide second and third-generation descendants of Japanese nationals who had emigrated to Brazil, Peru, and other South American countries with status of residence as permanent residents with no restrictions on their right to work. This created a so called "side door" providing companies that had been demanding the opportunity to employ foreign workers with the chance to do so. The same

amendment also included the status of residence entitled "trainee," that is, not workers in name, but enabled employers to engage foreign nationals as workers in all but name.

## II. Establishment of the 1993 Technical Intern Training Program and the 2009 amendment to the ICA

The Technical Intern Training Program established in 1993 was a program combining a period spent as a "trainee," where trainees are *not* classed as workers, and a period as a "technical intern," recognized as workers. This was the product of compromise between the MOJ and the Ministry of Labour. The original program covered a two-year period of which the first third was the non-worker "training," and the remaining two thirds were the worker "technical internship." The period was later extended to three years, with the first year spent as a trainee and the remaining two as a technical intern. However, in reality, there was practically no difference between the work conducted by a trainee and that of a technical intern, as those in the program were essentially working while receiving on-the-job training. Eventually, a succession of court judgments saw "trainees" recognized as workers, and calls arose for amendments to the ICA.

With government bodies such as the Council for Regulatory Reform, the Council on Economic and Fiscal Policy (CEFP) and the MHLW also calling for revisions to the program, the 2009 amendment to the ICA established "technical intern" as a status of residence that applies throughout the three-year internship period. It ensured that all activity other than classroom-based learning is regarded as labor under an employment relationship, which calls for full application of labor law. Alongside this, legislation was also introduced the system of

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“supervising organizations”<sup>1</sup>—organizations that act as brokers matching labor demand with supply—which had been accepted on a de facto basis up until that point.

### III. The 2016 Technical Internship Act

Even after the 2009 amendment to the ICA, the Technical Internship Program was continuously wrought with legal violations and fraudulent activity, prompting strong calls for improvements. At the same time, employers were demanding an extension to the length of time for which they were permitted to engage technical interns. The MOJ and the MHLW responded by forming a study group consisting of experts. Based on the group’s report, the Act concerning the Proper Implementation of the Technical Internship of Foreigners and Protection of Technical Interns (Technical Internship Act) was established in 2016. This made it possible for technical interns who had completed the three-year internship and returned to their home country to come back to Japan for a further two years’ technical internship. Therefore, they are able to be engaged as a technical intern for a total of five years. Meanwhile, the numerous problems involving supervising organizations were addressed by requiring such organizations to obtain a license and allowing license to be revoked where necessary. The system was also more strictly regulated by obliging companies, farms, and other such entities implementing internships to be registered and accredited for each technical internship plan.

However, while such interns are legally recognized as workers, their permission to work is limited to their technical internship at a specific company or farm. Consequently, they are generally not permitted to switch to another company. This has resulted in numerous cases of such interns—particularly those at companies and farms that provide low wages—leaving their employers and working illegally for higher-paid companies in urban areas. There is also the ongoing issue of incidents of sexual harassment and other such violation of human rights against technical interns.

### IV. Highly-skilled foreign professionals

The policies described in the previous sections relate to non-skilled or semi-skilled workers, as opposed to people in professional or technical roles requiring advanced skills. There was always a contrastingly proactive approach to welcoming workers in advanced professional or technical roles. Particularly from the beginning of the 21st century, the global competition for advanced human resources became fiercer. Taking note from approaches such as the Green Card system in the US, the Japanese government began to pursue policies aimed at welcoming highly-skilled human resources. The year 2012 saw the introduction of a points-based system for highly-skilled foreign professionals, under which people exceeding a certain number of points for academic background, professional experience and other such factors are given preferential status of residence. In 2017, the period of stay required for application for permanent residence was reduced to three years for applicants with 70 points or more and to one year for applicants with 80 points or more. As this means effectively granting people permanent residence from the start, it can be seen as a form of selective immigration policy.

### V. The 2018 amendment to the ICA

At the CFP in February 2018, Prime Minister Shinzo Abe proposed a policy for fundamental changes to such measures for accepting foreign workers. With increasingly severe labor shortage in small and medium-sized enterprises (SMEs), the policy is aimed at accepting overseas workers as semi-skilled workers in a range of industries, with upper limitations on status of residence and a general ban on bringing family members. This was deliberated by a Cabinet task force, which proposed a general framework for the system as part of the government’s “Basic Policy on Economic and Fiscal Management and Reform” in June 2018. Followed by review of the MOJ, a bill for amendment to the ICA was submitted to the Diet in November and enacted in December 2018. Here is an outline of that amendment.

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One of the newly-established statuses of residence, Type 1 is for people with a level of skills that allows them to engage in a certain level of work straightaway, without receiving special training. The applicant's competency is checked through industry specific examinations prescribed by the ministry with jurisdiction over the industry in question. At the same time, as technical intern—namely, people on technical internships as described above—who have completed the second stage of their internship are exempt from such examinations, for the foreseeable future it is likely that in practice the majority of people receiving Type 1 will be former technical interns. Foreign workers with this status are permitted to stay up to five years and are not allowed to bring family to Japan. Combined with the technical internship period, this means a total of ten years employment in Japan, without being able to bring family.

In contrast, Type 2 is for highly-skilled foreign workers who are able to pursue advanced professional or technical tasks by their own judgement or who are able to oversee and successfully complete tasks as supervisory role. Workers under Type 2 have no limitation on renewing their period of residence and are permitted to bring family. This type therefore has more of the quality of an immigration policy.

In pursuing this policy of accepting foreign workers it is also necessary to dispel the concerns that may arise among Japanese workers about potential negative impacts on the labor market. For that, the amendment applies only to “industrial fields in which it is necessary to employ foreign workers to compensate for labor shortages caused by a difficulty securing human resources.” These sectors are specified by the MOJ upon discussion with the ministry with jurisdiction over the relevant industry. However, while at the CFP in February 2018 just five sectors had been listed, the basic policy approved by the Cabinet following the enactment of the amendment saw this balloon to 14 sectors (see Appendix on pages 6–7), such that, in effect, the various industrial circles complaining of labor shortage had almost all had their pleas answered.

Consideration is also being given to make

ongoing checks on the state of labor shortage in the sectors permitted to accept workers and take measures where there is no longer a labor shortage (in other words, where there is an excess of labor). These include reviewing the policy of accepting foreign workers, putting a stop on granting official approval of status of residence and removing said sectors from the list by ministerial ordinance. At the same time, it is unreasonable for companies to dismiss foreign workers who have been employed for a relatively long period of time and become accustomed to the company's work and employ comparatively unskilled Japanese unemployed people in their stead. It is difficult to predict at this stage, however, what will happen in a labor market that has already accepted large numbers of foreign workers should the current economic prosperity come to an end and the Japanese economy fall into a recession.

Moreover, in response to Japanese workers' fears of a drop in wages in the labor markets of sectors where SMEs incapable of paying high wages employ foreign workers at a minimum wage, ministerial ordinance prohibits “discriminatory treatment” when determining remuneration or other such employment conditions, such that employers are expected to provide foreign workers with wages that are at least equal to those of Japanese workers. However, this does not necessarily guarantee high wages in jobs where the labor shortage is due to the fact that wages are so poor that they do not attract Japanese workers in the first place. Rather, low wage structures dependent on foreign workers may take root in certain jobs in certain sectors.

One issue that was noted after the amendment had been enacted was the impact of the large difference in wages between urban and rural areas. In Japan, each prefectural labor bureau prescribes its own minimum wage, and there is a gap as high as 30% between the highest minimum wage—985 yen (approx. US\$8.76) per hour in the Tokyo Metropolitan area—and the lowest—761 yen (approx. US\$6.77) per hour in Kagoshima Prefecture. Foreign workers on specified skilled working visas who are hired at around the local minimum wage by short-staffed rural SMEs

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will not hesitate to switch employers if they discover that they can earn higher wages in urban areas. This is because—unlike the aforementioned technical interns—there is no restriction on them transferring to another employer within the same sector (that has been recognized as having a labor shortage). In response to this problem there has even been a government proposal for a nationwide, uniform minimum wage, but there are as yet no prospects for it being approved.

## VI. Measures to adapt and coexist with foreign workers

The acceptance of foreign workers with specified skilled worker status commenced as of April 1, 2019. In December 2018, the government pursued preparations for this by compiling measures focused on supporting non-Japanese residents in their daily lives from a broader perspective. These include measures for providing information on administrative procedures and daily life in a range of languages, developing a consultation framework, developing and maintaining the environment for the provision of medical, health, and welfare services, improving Japanese language education, enhancing education and other such provisions for non-Japanese children, providing job-seeking assistance and other such support for international students, securing suitable working environments and other such provisions, and promoting such workers' social

insurance enrollment.

Significant consideration has also been given to put a stop to the activities of exploitive brokers. The measures to address this include the creation of bilateral intergovernmental agreements (with nine countries) to be used as a basis for sharing information, increased efforts by the Ministry of Foreign Affairs (and its overseas agencies), the National Police Agency, the MOJ, the MHLW, the Organization for Technical Intern Training (OTIT), and other relevant organizations to collaborate to fully eliminate exploitive brokers and introduce stricter immigration screening criteria, and detecting illicit mediation agents and other such intermediaries by increasing the amount of information that applicants need to provide when applying for residence.

### Note

1. The system by which “supervising organizations”—namely, business cooperatives, commerce and industrial associations and other such organizations not seeking business profit—accept technical interns and assign them to technical internships at “implementing organizations,” that is, their affiliated companies and other such entities (see the website of the Japan International Training Cooperation Organization, JITCO).

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Appendix. Policies for operating the working visa system for Specified Skill Type 1 (14 sectors)

Competent authority	Sector	State of labor shortage	Human resources criteria		Other key points		
		Estimated maximum number of workers to be accepted in coming five years <sup>1</sup> (persons)	Skills examination	Japanese language proficiency exam <sup>2</sup>	Work engaged in	Form of employment	
			Starting timing of implementation				
Ministry of Health, Labour and Welfare	Nursing Care	60,000	Care work skills evaluation exam (tentative) [newly established], etc.	Japanese language proficiency evaluation exam, etc. (In addition to the above) Exam evaluating proficiency in Japanese language for care work, etc.	· Physical care, etc. (bathing, providing meals, or assisting with bathroom visits, etc. as suits the users' physical and mental condition) and related support (providing recreational activities, assisting with function training, etc.) <i>Note:</i> Home help services are excluded	Only directly employed	
			April 2019		(1 exam category)		
	Building cleaning	37,000	Building cleaning industry skills evaluation exam for Type 1 [newly established]	Japanese language proficiency evaluation exam, etc.	· Cleaning the interior of buildings	Only directly employed	
			From fall 2019 onward		(1 exam category)		
Ministry of Economy, Trade and Industry	Materials processing	21,500	Manufacturing industry skills evaluation exam for Type 1 (tentative) [newly established]	Japanese language proficiency evaluation exam, etc.	· Casting · Metal press operation · Finishing · Welding · Forging · Factory sheet metal work · Machine inspection	· Die casting · Plating · Machine maintenance · Machining · Aluminum anodizing · Painting	Only directly employed
			By March 2020	From fall 2019 onward	(13 exam categories)		
	Industrial machinery	5,250	Manufacturing industry skills evaluation exam for Type 1 (tentative) [newly established]	Japanese language proficiency evaluation exam, etc.	· Casting · Painting · Finishing · Electric equipment assembling · Welding · Forging · Ironworking · Machine inspection · Print wiring board manufacturing · Industrial packaging	· Die casting · Factory sheet metal work · Machine maintenance · Plastic molding · Machining · Plating · Electronic equipment assembling · Metal press operation	Only directly employed
			By March 2020	From fall 2019 onward	(18 exam categories)		
	Electronics and electric machinery	4,700	Manufacturing industry skills evaluation exam for Type 1 (tentative) [newly established]	Japanese language proficiency evaluation exam, etc.	· Machining · Finishing · Print wiring board manufacturing · Industrial packaging · Metal press operation · Machine maintenance · Plastic molding	· Factory sheet metal work · Electronic equipment assembling · Painting · Plating · Electric equipment assembling · Welding	Only directly employed
			By March 2020	From fall 2019 onward	(13 exam categories)		
Ministry of Land, Infrastructure, Transport and Tourism	Construction	40,000	Construction industry skills evaluation exam for Type 1 (tentative) [newly established], etc.	Japanese language proficiency evaluation exam, etc.	· Frame working · Earthwork · Interior finishing/paper hanging · Plastering · Roofing · Concrete pressure feeding	· Electrical telegraph work · Tunnel jacking · Reinforcing bar construction · Application of construction equipment · Connecting reinforcing bars	Only directly employed
			By March 2020	From fall 2019 onward	(11 exam categories)		
	Shipbuilding	13,000	Shipbuilding and marine equipment industry skills evaluation exam for Type 1 (tentative) [newly established], etc.	Japanese language proficiency evaluation exam, etc.	· Welding · Finishing · Painting · Machining	· Ironworking · Electric equipment assembling	Only directly employed
			By March 2020	From fall 2019 onward	(6 exam categories)		



(Continued)

Competent authority	Sector	State of labor shortage	Human resources criteria		Other key points	
		Estimated maximum number of workers to be accepted in coming five years <sup>1</sup> (persons)	Skills examination	Japanese language proficiency exam <sup>2</sup>	Work engaged in	Form of employment
			Starting timing of implementation			
Ministry of Land, Infrastructure, Transport and Tourism	Vehicle maintenance	7,000	Automobile repair and maintenance industry skills evaluation exam for specified skills (tentative) [newly established], etc.	Japanese language proficiency evaluation exam, etc.	· Daily inspection and maintenance, regular inspection and maintenance, and disassembly and maintenance of automobiles  (1 exam category)	Only directly employed
			By March 2020	From fall 2019 onward		
	Airport ground handling and aircraft maintenance	2,200	Aviation industry (airport ground handling or aircraft maintenance) skills evaluation exam (tentative) [newly established]	Japanese language proficiency evaluation exam, etc.	· Airport ground handling (ground traveling support, baggage and cargo handling, etc.) · Aircraft maintenance (maintenance, etc. of airframe and accessories, etc.)  (2 exam categories)	Only directly employed
			By March 2020	From fall 2019 onward		
	Accommodation	22,000	Accommodation industry skills assessment exam (tentative) [newly established]	Japanese language proficiency evaluation exam, etc.	· Providing accommodation services, such as front desk, planning and promotion, customer service and restaurant services, etc.  (1 exam category)	Only directly employed
			April 2019			
Ministry of Agriculture, Forestry and Fisheries	Agriculture	36,500	Agriculture (cultivation agriculture all categories or livestock agriculture all categories) industry skills assessment exam (tentative) [newly established]	Japanese language proficiency evaluation exam, etc.	· Cultivation agriculture all categories (cultivation management, storing, shipping and selection of agricultural produce, etc.) · Livestock agriculture all categories (management of raising, housing, shipping and selection of livestock, etc.)  (2 exam categories)	Directly employed or temporary dispatched <sup>3</sup>
			In 2019	From fall 2019 onward		
	Fishery	9,000	Fishing (Fishing or aquaculture) industry skills assessment exam (tentative) [newly established]	Japanese language proficiency evaluation exam, etc.	· Fishing (producing and repairing fishing gear, detecting aquatic animals and plants, operating fishing gear or fishing machinery, gathering aquatic animals and plants, processing or preserving fish catches, ensuring safety and hygiene, etc.) · Aquaculture (producing, repairing and managing aquaculture materials, growth management, harvesting and processing of farmed aquatic animals and plants, ensuring safety and hygiene, etc.)  (2 exam categories)	Directly employed or temporary dispatched <sup>3</sup>
			By March 2020	From fall 2019 onward		
	Manufacture of food products and beverages	34,000	Food products and beverage industry skills assessment exam (tentative) [newly established]	Japanese language proficiency evaluation exam, etc.	· Food and beverage production all categories (food and beverage [excluding alcohol] production and processing, safety and hygiene)  (1 exam category)	Only directly employed
			October 2019	From fall 2019 onward		
	Restaurant services	53,000	Restaurant service industry skills assessment exam (tentative) [newly established]	Japanese language proficiency evaluation exam, etc.	· Food service all categories (preparing food and beverages, customer service, restaurant/shop management)  (1 exam category)	Only directly employed
			April 2019			

Source: JILPT, based on the Ministry of Justice (MOJ) "Policies for the specified skilled working system" (<http://www.moj.go.jp/content/001278435.pdf>) and <http://www.moj.go.jp/content/001279757.pdf>) and "Policies for operating the specified skilled working system" (<http://www.moj.go.jp/content/001279756.pdf>), last accessed April 9, 2019. Translation is tentative by JILPT.

Notes: 1. In total, 345,150 persons (14 sectors).

2. Names of examinations are tentative.

3. As for the form of employment of agriculture and fishery, workers are employed full-time, and, as a general rule, directly by the employer. Where special circumstances warrant, workers may be hired as temporary dispatched employees (*haken*) as an exception.